



National Association of Business and Educational Radio

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1501 Duke Street  
Alexandria, VA 22314  
703-739-0300  
1-800-759-0300  
FAX: 703-836-1608

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AUG 11 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

August 11, 1994

By Hand

Mr. David Furth  
Private Radio Bureau  
Federal Communications Commission  
2025 M Street, N.W.  
Room 5202 - Stop Code 1700 A3  
Washington, D.C. 20554

Re: Written Ex Parte Notification in  
PR Docket 93-35 -- Coordination of 929 MHz  
PCP Applications  
And Exclusivity Requests

Dear Mr. Furth:

Thank you for taking the time with Beverly Baker to meet with Jay Kitchen, Alan Tilles and me recently on a number of private radio issues. The purpose of this letter is to memorialize my understanding of our discussions regarding NABER's coordination of 929 MHz exclusivity applications and your confirmation that NABER's current coordination processing procedures comply with the Commission's rules and with the policies enunciated in the Commission's Report & Order that approved exclusive use of 929 MHz PCP channels (*See Report and Order*, FCC Mimeo No. 93-479, released November 17, 1993). Pursuant to Section 1.1206(a)(1) of the Commission's rules, two copies of this letter are being submitted to the Office of the Secretary for inclusion in the public record.

We explained to you and Beverly Baker that although NABER was confident that it was fully complying with the letter and spirit of the exclusivity rules as promulgated, we wanted to obtain specific assurances from you that we were correct.

NABER originally expressed its concerns about the exclusivity rules in a Petition For Reconsideration filed on December 27, 1993. In its Petition, NABER explained that the licensing approach adopted by the Commission would lead to an amalgam of local area systems, rather than efficient, high-capacity wide-area regional systems and would create artificial co-channel dead

2 copies

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zones around the country. NABER asked the Commission, among other things, to consider statewide licensing of regional PCP systems to create a stable, predictable licensing environment. Since December, as the number of exclusivity applications has increased, NABER and its members have frequently contacted the Commission staff regarding the status of the Petition.

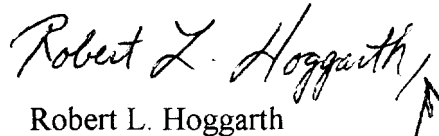
At our meeting Jay Kitchen explained that since the new rules were adopted, NABER has continued to coordinate all 929 MHz PCP applications, including exclusivity requests, in order of receipt on a first come - first served basis. He explained that in reviewing and coordinating exclusivity requests, NABER coordinators protect all transmitter sites listed on an applicant's request for exclusivity from co-channel users using the separation standards adopted by the Commission. We advised you that NABER coordinators rely solely on the transmitters listed in the exclusivity request as the basis for providing co-channel protection. Subsequent co-channel applications accompanied by requests for exclusivity are processed in order of receipt and sites that would violate minimum separation requirements to co-channel systems are not passed on to the Commission as part of an applicant's request for exclusivity. I specifically asked you if this approach was appropriate and you confirmed that NABER's procedures comply with the existing exclusivity rules.

During the seven months since filing its Petition, NABER has received over 250 requests for exclusivity, 25 of which have been for regional systems. A number of NABER members and customers who have received grants of regional exclusivity have expressed concern that NABER's Petition for Reconsideration has not yet been acted upon and that the failure to extend regional system protection to state boundaries is resulting in the grant of co-channel exclusive nationwide systems that effectively surround regional systems previously coordinated by NABER. These parties now find that they cannot expand their regional systems, even to areas that are so small that a subsequently coordinated co-channel applicant could not accommodate a transmitter site. We have explained to our members and customers that until the Commission acts upon NABER's Petition For Reconsideration, NABER must continue to follow the 929 MHz exclusivity rules as adopted and cannot protect exclusive regional systems beyond the co-channel separation criteria established by the Commission. You confirmed this understanding.

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If I have mistaken your advice in any way on the issue of NABER's coordination processes please call me immediately to clarify. Thank you again for meeting with us.

Best regards,

A handwritten signature in cursive script that reads "Robert L. Hoggarth". The signature is written in dark ink and includes a stylized flourish at the end.

Robert L. Hoggarth  
Assistant Director - Government Affairs

cc: Office of the Secretary  
Beverly Baker  
Jay Kitchen  
Alan Tilles, Esq.